

Issue Date: March 12, 2024

Multilingual Learners and Dual Identification

Purpose

Distinguishing a learning difficulty resulting from learning English as a second language and one caused by a disability requires a consideration of many variables. This document focuses on helping special educators and administrators better serve Multilingual Learners with disabilities, particularly when identifying Multilingual Learners' need for special education services. Best practice is outlined from pre-referral to the development of an IEP that ensures Multilingual Learners receive a Free Appropriate Public Education (FAPE).

Initial Evaluations for Multilingual Learners

When determining whether to make a referral for a Multilingual Learner, every effort should be made to identify others with knowledge of the student's unique linguistic, cultural, educational, and experiential background. If the student is receiving Multilingual services, it is recommended that the Multilingual teacher be part of the team. If the student is not already receiving Multilingual services, the team ideally would include staff familiar with the student's second language development, cultural background, prior educational history, and academic knowledge and skills.

In many cases, parents are the best source for this information, and it is recommended they be included in every phase of this process. For parents who do not speak English fluently, interpreters might be required to facilitate communication, ensure that parents understand the issues, and assist in developing the student's plan. Teams may decide that related services are needed for parents of Multilingual Learners if the parents need further consultation and training to support their student. Counseling and training should be provided for parents of Multilingual Learners to assist in acquiring the necessary skills to support the interventions the student is receiving.

An effective, high-functioning system of support can ensure that there are appropriate and adequate interventions implemented for all students in general education settings. The following information and resources describe requirements and best practice related to components of that support system.

Educators and administrators must use judgement and review a wide array of available data when making a decision about referring a Multilingual Learner for a Special Education Evaluation. Evidence from the interventions that have been implemented, including interventions related to extrinsic factors that impact learning, can be reviewed to determine if it is appropriate to make



an Initial Referral for Special Education. [The Comparison of Language Differences Versus Disabilities Chart](#), found on page 6 of the Tools and Resources for Learners with Disabilities toolkit that was developed by the United States Department of Education, can assist teams to identify learning behaviors and if those behaviors are related to language acquisition or a possible learning disability.

In 2022, the AOE released the [K-12 Special Education Evaluation Implementation Guide](#). The guide provides practitioners and administrators with a common resource to support the development and/or refinement of a comprehensive evaluation process for Special Education. The full guide might be a helpful resource, but educators supporting Multilingual Learners may be especially interested in the key components of an appropriate referral for evaluation, on page 21.

For additional guidance on supporting students who are Multilingual Learners in the general education setting, please see federal guidance in the January 7, 2015 [Dear Colleague Letter](#) from the Federal Department of Justice. Individual student interventions are typically determined with an Educational Support Team (EST), and extrinsic factors are an area of consideration in the case of a student who is a Multilingual Learner.

Students who are Multilingual Learners potentially have a wide variety of extrinsic factors that impact their lives, often impacting their access to the educational system. These factors are specific to the differences a Multilingual Learner experiences in their environment. Cultural and linguistic diversity must be considered when assessing a student's academic and functional skills. Identifying extrinsic factors can better inform instruction and intervention for students. Consider using the [English Learner Extrinsic Factors Form](#), on page 405, developed by the California Department of Education, to help identify factors that may impact learning. This form walks teams through comprehensive categories of extrinsic factors that can impact learning with specific questions to guide the analysis.

The [Initial Referral and Decision-Making Process](#) flowchart, developed by San Diego Unified School District, can help guide teams through identifying extrinsic factors and possible directions for intervention that align with each factor. The [English Learner Intervention Summary](#), on page 20, is a table developed by the San Diego Unified School District that could be used by ESTs to document the areas of concern, the interventions that are delivered, and the outcomes. In addition to looking at academic and behavioral concerns, this form can be used to track if extrinsic factors have been addressed through intervention and the outcomes of those interventions.

When considering a referral for special education, the AOE recommends that an EST make decisions with the support of a flow chart such as the one developed by [Garcia and Ortiz](#), on page 50 of the document Preventing Inappropriate Placements of Language Minority Students in Special Education. The chart will help EST members analyze the roles of cultural differences, curriculum and instructional styles, educational environment, family perceptions, and background related to the student's academic performance in the general educational setting.

It may also be necessary to consider the potential effects of trauma on the language proficiency in some of our students, particularly our refugee and parolee students. For resources related to helping support students with trauma, please contact Stephanie Vogel, Title III and EL Programs Director at stephanie.vogel@vermont.gov.

Assessment Process for Multilingual Learners

If after reviewing the data the team decides to proceed with the assessment process, it is paramount that school districts consider the student's English language proficiency when determining the appropriate assessments and other evaluation materials to be used. As teams are planning for the assessment process, they must ensure that the proper testing materials can be obtained to assess a Multilingual student in accordance with IDEA requirements and timelines. Students should never be identified as having a disability because performance is a result of limited English proficiency. Please see page 40 of the [K-12 Special Education Evaluation Implementation Guide](#) for recommended steps for Evaluation Planning Teams (EPT) to take to ensure selection of appropriate assessments and methods of administration. Federal guidance instructs public agencies to ensure that assessments for evaluations are selected and administered so as not to be discriminatory on a racial or cultural basis, and that assessments are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, emotionally, and functionally, unless it is clearly not feasible to so provide or administer ([34 CFR § 300.304](#)).

It is recommended that evaluation planning teams review the following questions before beginning the evaluation process:

1. Have we considered the important factors to design the evaluation?
2. What do we already know? What do we want to learn?
3. What are the English language skills of this student? How do we know?
4. Which information tools will be useful? Who will use them?
5. Are there appropriate tests in this student's native language? Are the norms appropriate? Does the student require the tests to be in his/her first language? Are results interpreted in a way parents understand?
6. If we are using an interpreter, who will it be? Has he/she been trained in the special education assessment process and interpreting procedures?
7. Have parents received notification of their rights and procedural safeguards in a language they understand?

The EPT meeting should include all the members outlined on page 28 in the [K-12 Special Education Evaluation Implementation Guide](#). It is necessary that districts ensure that parents and guardians can meaningfully participate in these conversations. This document, [Holding Individualized Education Program \(IEP\) Meetings with English Language Learner \(ELL\) Families and Interpreters](#), developed by the Minnesota

Department of Education, offers recommendations for working with interpreters before, during, and after IEP meetings.

When evaluating a student who is a Multilingual Learner, it is essential to have a qualified evaluator who is appropriately trained to administer, score, and interpret a given assessment. This could range from a professional who is a special education teacher with training in the assessment instrument, to someone with a Ph.D. in school psychology. Any professional administering an assessment would also need to have had training on the assessment being administered, including training in assessing students who are Multilingual Learners.

Eligibility Determination for Multilingual Learners

To determine eligibility, it is advised that teams collect data from a variety of sources and rule out any extrinsic factors that could be the root cause of the student's difficulties. The team must consider if the student's needs occur across settings and languages, and there should be adequate evidence indicating that the child's needs cannot be met in the general education setting.

It is recommended that evaluation planning teams review the following questions before determining special education eligibility:

1. Do we have sufficient, unbiased information to make a decision?
2. Can diversity or language factors be ruled out as a primary cause of the student's difficulties?
3. Can we document that there is a disability (most likely without the use of standardized test scores)? Can we document there is a disability in both (all) the languages the child speaks?
4. Does the student need special education services to benefit from the general education curriculum?
5. Does the student need English as a second language services to benefit from the general education curriculum?

There are situations in which immediate action might be needed, and there is no requirement that a student receive interventions prior to referral. If a child has obvious signs of cognitive or physical issues, they may need to receive immediate support to ensure access. A student may be referred before, during, and after supports, and an LEA cannot delay an evaluation based on a student having not received interventions.

Developing IEPs for Multilingual Learners

When teams are developing Individualized Educational Programs (IEP) for Multilingual Learners, they must consider the language needs of a child as it relates to the IEP. The IEP should incorporate how the language instruction education program meets the objectives of the student's IEP. Students who are Multilingual can receive both the language assistance and disability-related services to which they are entitled under Federal law.

To make these decisions appropriately, it is recommended that there are members of the IEP team with training in second language acquisition and an understanding of how to differentiate between the impacts of English proficiency and the student's disability. This checklist, [Considering Limited English Proficiency - Developing the IEP](#), created by the United States Department of Education, guides IEP teams through framing questions to ensure that the student's English Language Proficiency is included in the document.

It is recommended that IEP teams review the following questions to support IEP development:

1. How will we coordinate services to meet the complex needs of this student?
2. What are the language needs of the student?
3. Who will be involved in meeting the language and the special education needs of this student?
4. How will the staff collaborate?
5. Where will the services be delivered? Who will monitor progress and for which things?
6. Have we ensured that parents were knowledgeable partners in decision making and planning?

Writing Goals and Services

A Multilingual Learners strengths and needs should be identified in the IEP in the student's English and native language. It is best practice that the disability impact on academic and functional skills is identified across languages and embedded into the goals and services for the student. Goals and objectives need to directly align with the identified concerns and needs. The questions in the document, [Questions to Consider During IEP Development](#), can help guide team as they develop culturally responsive IEPs.

For federal guidance regarding goal writing for Multilingual Learners with disabilities, please see [OSEP's Policy Letter](#) from 2021.

Professional Learning for Teachers

[Improving Instruction for English Learners Through Accessibility Decision Making \(Improving Instruction\): Home | NCEO](#): This list of resources, including self-paced courses, helps providers understand how best to make decisions about accessibility for ELs with disabilities in their grade/subject courses. There are also included resources for communicating with and engaging parents and guardians in the process.

[Self-Paced Professional Learning from WIDA](#): All grade and content teachers, interventionists, paras, and other providers are eligible to complete the self-paced trainings with WIDA. There are many to choose from, but for these learners, we particularly recommend Making Language Visible in the Classroom. To register for a WIDA Secure Portal account, please contact WIDA Client Services at help@wida.us or 1-866-276-7725

Multilingual Learners who Require Intensive Special Education

[Considerations for Educators Serving English Learners with Significant Cognitive Disabilities](#): The Alternate English Language Learning Assessment (ALTELLA) released several briefs to support educators who work with Multilingual Learners with significant cognitive disabilities. This brief offers support with identifying Multilingual Learners with complex needs, team approaches to decision making, and approaches to accessibility and accommodations.

[English Language Proficiency Standards for Students with Significant Cognitive Disabilities](#): This text gives three ELP “levels,” low, medium, and high, and identifies how each level might manifest within the proficiency standards. It covers all standards K-12 and provides examples that accompany each level encompassed within each proficiency standard.

[A Framework for Understanding English Learners with Disabilities](#): This ALTELLA brief discusses Multilingual Learners with disabilities and the diverse needs related to accessibility. ALTELLA offers a framework for teams to consider as they determine the level of need present in their students.

[Nonverbal Communication in Diverse Classrooms](#): This brief from ALTELLA supports intercultural competence considerations for nonverbal Multilingual Learners with complex needs. It supports educators to consider the individual cultural differences in nonverbal communication as it applies to Multilingual Learners.